



Reply To  
Attn Of: HW-113

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

Neil Thompson  
COLSF 9.2 VI

SEP 25 1993

**MEMORANDUM**

**SUBJECT:** Audit Report No. P5CG\*8-10-0076-1100146  
Final Audit of Cooperative Agreement No. V-000282-01  
Colbert Landfill  
Washington Department of Ecology

**FROM:** Kathryn M. Davidson, Chief  
Program Management Branch

**TO:** Truman R. Beeler  
Divisional Inspector General for Audit  
Western Audit Division

Attached is the revised draft Final Determination for the above referenced audit. We are requesting your review and concurrence on this document. The revisions were made to reflect our understanding of the agreements reached in our meeting of September 22.

We have revised our findings regarding the Cost-Plus-Percentage-of-Cost contracting issue to state that Ecology's contracting actions are open to interpretation as to type of contract, but that EPA is not pursuing recovery of costs because of benefits derived from the work performed and a lack of evidence of financial harm to the Superfund program. In addition, it is our understanding that the OIG will not consider this draft Final Determination incomplete because milestones for EPA followup are not included.

Based on your letter of May 21, 1993 (attached), we believe that if the proposed determination regarding the Cost-Plus-Percentage-of-Cost contracting issue is acceptable, then all recommendations in the audit have been adequately addressed.

If you have any questions or comments, please contact me at (206) 553-1088 or Kirk Robinson at (206) 553-2104.

**Attachments**

cc: Bettina Stokes, Grants Administration/Region 10  
Barbara Barich, OIG  
Kirk Robinson

USEPA SF



## FINAL DETERMINATION

Audit Report No. P5CG\*8-10-0076-1100146  
Report on the Final Audit of Cooperative Agreement No. V-000282-01  
Colbert Landfill  
Washington Department of Ecology  
Olympia, Washington

This document presents EPA's final determination regarding the findings in the above referenced audit of the Colbert Landfill Cooperative Agreement, V-000282-01.

Overall EPA believes that significant benefits were derived from the work performed by Ecology under this cooperative agreement. EPA will continue to work with Ecology to develop and implement a successful Federal-State partnership for the Superfund program.

This audit contained findings and recommendations related to procurement procedures and allocation of leave. Ecology submitted comments to the Office of the Inspector General (OIG) in response to the audit. EPA reviewed these findings and recommendations, and Ecology's comments, then discussed them with both Ecology and the OIG. Based on our review of the audit report and these discussions, EPA has made the following determinations regarding this audit:

### FINDINGS

#### 1. Inadequate Procurement Procedures.

The OIG found that Ecology did not have a self-certified procurement system under 40 CFR Part 30. As a result, EPA was required to review and approve all procurement actions. However Ecology did not submit, nor did EPA request submittal of, procurement actions for EPA's review and approval. In addition, the OIG had three other specific findings (1A-C, below) that relate to Ecology's procurement process. In total, the OIG questioned as "ineligible" for Federal participation, costs totalling \$32,110, and questioned as "unsupported" for Federal participation, costs of \$692,093.

#### EPA Review:

The period of performance of this cooperative agreement, May 1984 through September 1987, was a time when both EPA and Ecology were implementing new programs and bringing new staff on board. For both agencies, staffing levels (workyears) were not sufficient to cover all work under these new programs. As a consequence, it is quite probable that some administrative details of the program were inadvertently overlooked for lack of time to address them. Under this situation, the responsibility for the lack of review and approval of procurement actions is shared by both Ecology and EPA.

It should be noted that Ecology now self-certifies its procurement system under 40 CFR Part 30. In addition, the relationship between EPA and Ecology has evolved to the point that Ecology rarely, if ever, uses contracts to conduct work specified in any cooperative agreement.

Corrective Action:

In addition to the corrective actions required here, specific corrective actions are detailed for each of the sub-findings (A-C), below.

Ecology is directed to review its contracting and procurement processes, then develop and implement the necessary procedures that will ensure that procurement regulations (either self-certification of procurement systems or EPA review and approval of contracting actions) are followed and documented. These procedures shall be in place within 180 days of receipt of this document.

**1A. Cost and Price Analysis were not performed as required by 40 CFR Part 33.290.**

The OIG could not find evidence that cost and price analysis were performed on a number of contract actions.

EPA Review:

EPA reviewed randomly selected contracting files related to the subject audit. EPA found that not all of Ecology's procurement files contained cost and price analysis documentation. However, on the few files that contained sufficient documentation, it appears that Ecology did perform a basic cost and price analysis.

Corrective Action:

Ecology is directed to review its contracting and procurement processes, then develop and implement the necessary procedures to ensure that cost and price analyses are performed and appropriately documented. These procedures shall be in place within 180 days of receipt of this document.

Because EPA derived benefit from the work performed by Ecology under these contract actions, EPA will not disallow for Federal participation the costs found unsupportable (\$692,093) for the following reasons:

- EPA derived benefit from Ecology's efforts on the Colbert Landfill site. To require repayment of all contract costs based on, in all probability, incomplete files has the perception of being punitive to the State.
- It appears, despite the condition of the files, that Ecology did conduct some form of basic cost and price analysis.

In addition, Ecology is directed to improve its record keeping procedures to ensure that cost and price analyses are adequately documented in the future.

**1B. A cost-plus-percentage-of-cost work assignment was awarded, which is unallowable under 40 CFR 33.285.**

The OIG found that a work assignment (#1) awarded to Golder and Associates was classified as a cost-plus-percentage-of-cost type of work assignment. As a result, the OIG declared as ineligible for Federal participation, costs of \$32,110.

EPA Review:

In EPA's review of this finding with Ecology, Ecology claimed that the contracting action in question was actually a cost-plus-fixed-fee contract. EPA examined the subject contracting action and found that when the language of the contracting action and the management of the contract were closely examined, the contracting action could be interpreted as either a cost-plus-percentage of cost or a cost-plus-fixed-fee type of contract action. Specifically, EPA found that Ecology was deficient in properly documenting the fee arrangement in the compensation clause of the contract. EPA also found that there would not be a significant cost difference as a result of either interpretation of contract type.

Corrective Action:

EPA believes that the contract questioned could have been interpreted as cost-plus-percentage-of-cost type contracts due to insufficient documentation. However, because EPA derived benefit from the work performed by Ecology, and there is no evidence of financial harm incurred (costs would be equivalent regardless of contract type), EPA is supporting all questioned costs associated with this finding.

However, Ecology is directed to review its contracting and procurement procedures, then develop and implement appropriate procedures to ensure that all future contracts used under cooperative agreements are properly documented as eligible contracts under 40 CFR 33.285. Specifically, Ecology must clearly define the fee arrangement within the compensation clause of any contract or work assignment that is funded with Federal dollars. These procedures shall be implemented within 180 days of receipt of this document.

- 1C. Written justification for the type of subagreement was not contained in the procurement files as required by 40 CFR 33.250(a)(4).

The OIG found that Ecology's contract and procurement files did not contain the specified documentation required under Federal regulations.

EPA Review:

As noted above, when EPA reviewed the files for cost and price analyses, the files were found to be incomplete and lacking full documentation of the procurement process.

Corrective Action:

Ecology is directed to review its contract and procurement file structure and file management procedures to ensure that it meets 40 CFR Part 33 requirements. Within 180 days of receipt of this document, Ecology shall implement improvements to their file management procedures necessary to meet Federal requirements.

**2. Labor Distribution Weaknesses.**

The OIG found that Ecology's system for allocating holiday and leave costs did not comply with OMB Circular A-87, which requires an equitable system of allocating leave costs. The OIG found that leave costs were based on the judgement of the supervisor to allocate leave based on recent projects to which time had been charged. As a result the OIG found all personnel and related costs "unsupportable" for Federal participation and recommended that EPA disallow all costs (\$68,096)

covering direct labor, fringe benefits, and indirect costs related to direct labor.

EPA Review:

The Superfund program, with its emphasis on cost recovery, requires a system of time and cost accounting more rigorous than that of other programs. As a result, auditors are looking very closely at the leave allocation systems and whether they are "equitable" in accordance to OMB Circular A-87. While Ecology has used the same time accounting system for all its programs, Superfund represents the first time that the leave allocation policies of Ecology have been questioned. Questions have been raised by several states and EPA as to the criteria for an "equitable" leave allocation system, as none are defined in the OMB circular. In addition, an examination of how leave costs were charged revealed that Ecology tended to undercharge leave to the cooperative agreement, and absorb the bulk of the leave costs against State accounts.

Corrective Action:

EPA is directing Ecology to develop and implement an equitable leave allocation system. EPA will work with Ecology to define criteria for what is an "equitable" system for allocating leave. Ecology, using the agreed upon criteria, will then develop and implement an equitable leave allocation system within 180 days. However, EPA will not require Ecology to reallocate past costs or reimburse EPA for Ecology's share of costs "questioned" as unsupported for Federal participation for the following reasons:

- While the cost in time and dollars to reallocate leave costs is not significant in relation to the total costs of the agreement, requiring Ecology to do a reallocation would not be cost effective in terms of adding value to either the cooperative agreement or the Superfund program.
- The current budgets of Ecology and/or EPA would be hard pressed to support both the cost in workyears and any necessary funding adjustments that might be necessary as a result of the reallocation of costs.
- There are no considerations for EPA's cost recovery program, as EPA has fully settled all costs and response actions with the Potentially Responsible Parties for the Colbert Landfill site.
- EPA derived benefit from Ecology's efforts on the Colbert Landfill site. To require repayment of all personnel costs based on how leave is charged (particularly when leave appears to be undercharged to this agreement) has the perception of being punitive to the State.

COSTS NOT ADDRESSED IN FINDINGS

In addition to the specific costs identified above, the OIG recommended that EPA disallow additional costs not addressed in the findings. The costs were identified as follows:

- Indirect costs of \$586 because Ecology did not adjust their 1985 indirect cost rate to reflect the final negotiated rate.
- Travel costs of \$200 for which Ecology could not provide supporting documentation.

Both of these recommendations for disallowing costs were contained in notes to financial summaries of the findings and were not discussed elsewhere in the audit report.

Corrective Action:

Ecology did not dispute either of these costs as being questioned. EPA concurs with the OIG that these costs (\$786) will be disallowed for Federal participation.

OIG RECOMMENDATIONS

1. Advise Ecology that the costs questioned of \$793,085 are disallowed for Federal Participation.

Ecology is advised that EPA is disallowing costs of \$786 for Federal Participation. EPA will not disallow for Federal participation any of the other questioned costs.

2. Obtain recovery of the \$222,064 of Federal funds paid in excess of the amount accepted in this report.

Ecology is directed to repay \$220, representing EPA's share of the disallowed costs.

3. Require Ecology to establish procedures to ensure that:

- Procurements are made in accordance with the requirements of 40 CFR Part 33.

Ecology is directed to develop and implement procedures designed to improve its record keeping for contracts and procurement. These procedural improvements shall be in place within 180 days of receipt of this document. It is noted that Ecology now self-certifies that its procurement system under 40 CFR Part 30.

- Leave costs are allocated in accordance with OMB Circular A-87.

Ecology is directed to develop and implement an equitable leave allocation system. EPA is committed to working with Ecology to develop criteria for what is an acceptable system for allocating leave. Once the criteria are in place, Ecology shall develop and implement an equitable system for allocating leave within 180 days.

SUMMARY

EPA is disallowing costs of \$786 for Federal Participation. Ecology is directed to repay EPA \$220 representing EPA's share of the disallowed costs. EPA is allowing for Federal participation all other costs questioned for Federal participation, a total of \$792,299.

However, Ecology is directed to make several improvements to their management procedures, particularly in the areas of procurement and financial management (leave allocation system).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF THE INSPECTOR GENERAL FOR AUDITS  
WESTERN DIVISION  
75 HAWTHORNE STREET  
19TH FLOOR, MAIL CODE 1-1  
SAN FRANCISCO, CA 94105-3901

May 21, 1993

MEMORANDUM

SUBJECT: Response to Draft Final Determination Letter  
Audit Report No. P5CG\*8-10-0076-1100146  
Cooperative Agreement No. V000282-010  
Washington Department of Ecology

FROM: *Allen M. Orand*  
Allen M. Orand  
Manager  
Western Audit Division

THRU: *Truman R. Beeler*  
Truman R. Beeler  
Divisional Inspector General for Audit  
Western Audit Division

TO: Kirk Robinson, Chief  
Contracts and Information Section  
EPA Region 10

On May 3, 1993, we received the Region's Draft Final Determination Letter (DFDL) in connection with Audit Report No. P5CG\*8-10-0076-1100146. Based upon initial discussions between yourself and Robert Adachi, additional information in support of the DFDL was received on May 10, 1993. Based on our review of all information provided by the Region, we concluded that the DFDL is "incomplete". Our comments on the Region's proposed action on each of the audit report recommendations is provided below.

. Recommendation A. The costs questioned in this recommendation included \$32,110 related to work assignment no. 1 under a contract WDOE awarded to Golder Associates. The audit considered the work assignment to be under the prohibited CPPC form of compensation. The audit conclusion was based on the following statement in the work assignment's budget and fee schedule: "Overhead and fees are a percentage of raw direct salaries". (Underscore added)

The Region's response to the audit finding proposed to accept the questioned costs because:

"EPA ... found that management of the contracts was generally consistent with appropriate management of the cost-plus-fixed-fee type contracts. In addition, EPA reviewed other contracts and work assignments awarded during the same time period. On most of the other contracts and work assignments it clearly states that the contract or work assignment is a cost-plus-fixed-fee (no other type of contract was identified). EPA found that Ecology consistently used cost-plus-fixed-fee type contracts. As a result, EPA believes that these contracts were awarded as cost-plus-fixed-fee type contracts."

Since the Region did not address the basis for questioning these costs, we consider the response "incomplete".

It is noted that we consider the Region's response to other costs questioned in recommendation no. 1 to be acceptable.

. Recommendation B. Subject to the comments related to recommendation no. A, we consider the Region's response acceptable.

. Recommendation C. The Region did not include milestone dates relating to when it will complete its review of the acceptability of the Washington Department of Ecology's (WDOE's) procurement, and employee fringe benefit, property system changes. As previously discussed with your office, we consider such action by the Region a necessary requirement for an adequate response. Accordingly, we consider the response "incomplete".

Since the Region's response to several of the recommendations in the audit report is considered "incomplete", it is requested that the Region withhold issuing the Final Determination Letter on the subject cooperative agreement until an adequate response is received by our office.

If you have any questions regarding the matters discussed in this memorandum, please contact Robert Adachi at 415-744-2442.

cc: Bettina Stokes, Audit File Coordinator, Region 10  
Charles Reisig, Manager, OIG Seattle Branch Office2